



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 2534-00

12 June 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: FORMER [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was discharged because of a physical condition, not a disability, interfering with duty, vice misconduct.

2. The Board, consisting of Ms. Taylor and Moidel and Mr. Ensley, reviewed Petitioner's allegations of error and injustice on 18 May 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 28 June 1999. On 23 February 2000, a Navy podiatrist recommended that he be discharged for "unsuitability" because of his ongoing complaints of foot pain related to diagnoses of chronic bilateral metatarsalgia, and plantar fasciitis, which were not considered disabilities. Petitioner submitted an undated memorandum to the discharge authority in which he requested that he be discharged as recommended by the podiatrist. In accordance governing directives, Petitioner was processed for discharge for a condition, not a disability, interfering with duty, and also due to misconduct/ civil conviction, based on his 8 December 1999 conviction of "Driving under the influence". After being advised that Petitioner was a marginal performer, at best, that he

had received a waiver of two alcohol related offenses in order to enlist, and that it appeared that his "drinking had not stopped", the discharge authority directed that he be discharged by reason of misconduct, with a general discharge, and a reenlistment code of RE-4.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that although Petitioner's discharge by reason of misconduct was proper, it was unduly harsh and will stigmatize him unnecessarily. In addition, the Board does not believe he would have been processed for discharge by reason of misconduct had he not been recommended for discharge because of his bilateral foot pain. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

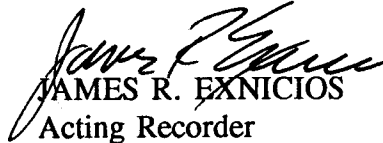
#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 17 March 2000, he was discharged for the convenience of the government due to a condition, not a disability, interfering with his performance of duty, with a general discharge, and that he was assigned a reenlistment code of RE-4.

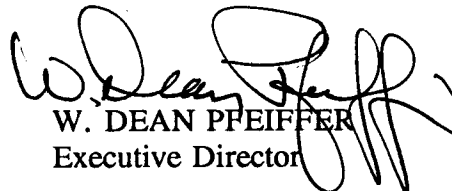
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
JAMES R. EXNICIOS  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director